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In re Application of	:	
WEISS, Lawrence D., et al.	:	
U.S. Application No.: 09/807,444	:	DECISION ON RENEWED
PCT No.: PCT/US99/22904	:	PETITION TO REVIVE
International Filing Date: 01 October 1999	:	ABANDONED
Priority Date: 02 October 1998	:	APPLICATION UNDER 37
Attorney's Docket No.: 374.37564A00	:	CFR 1.137(b)
For: SYSTEM AND METHOD OF ADVISING	:	
BUYERS HOW MUCH TO PAY FOR GOODS	:	
AND SERVICES BASED ON DEMOGRAPHICS	:	

This decision is issued in response to the : (1) "Renewed Petition Under 37 CFR 1.137(b);" (2) "Petition To Refund Excess Fees Paid" and (3) "Letter To PCT Petitions Attorney Richard M. Ross" filed in the present application on 21 August 2001. No additional petition fee is required.

### **BACKGROUND**

The application materials originally filed by applicant on 25 April 2001 (which were submitted with two separate return postcards, two separate Fee Transmittal forms, and which referenced two separate attorney docket numbers) were treated upon filing as two separate applications. Application number 09/807,444 (attorney docket number 374.37564A00, hereinafter "A00"), was created as a national stage of PCT/US99/22904 filed under 35 U.S.C. 371. The petition to revive the application under 37 CFR 1.137(b) included with the application materials, and one of the Fee Transmittal forms (both of which contained the A00 docket number) were placed in the present 09/807,444 application file, as was the copy of the international application and the related international stage papers. The \$620 petition fee and the \$65 surcharge for filing the declaration later than thirty months after the priority date, both of which were listed on the A00 Fee Transmittal form, were allocated to such application as well.

The Utility Patent Application Transmittal (Form PTO/SB/05), the second Fee Transmittal form, the formal drawings, and the preliminary amendment requesting entry of the formal drawings (all of which contained attorney docket number 374.37564X00, hereinafter "X00") were placed in serial number 09/807,443. Based on the Form PTO/SB/05, application number 09/807,443, which was created as a new utility application filed under 35 U.S.C. 111(a). The \$355 filing fee, and the \$893 in excess claims, all of which were listed on the X00 Fee Transmittal form, were allocated to application number 09/807,443.

On 24 July 2001, in present application 09/807,444, this Office issued a decision dismissing applicants' petition to revive the application under 37 CFR 1.137(b) based on applicants' failure to submit the basic national fee in this application.

On 21 August 2001, applicants filed, in present application 09/807,444: (1) "Renewed Petition Under 37 CFR 1.137(b);" (2) "Petition To Refund Excess Fees Paid," and (3) a "Letter To PCT Petitions Attorney Richard M. Ross" considered herein.<sup>1</sup>

On 24 April 2003, the USPTO mailed a "Notification Of Abandonment" (Form PCT/DO/EO/905) indicating that the present application was abandoned for failure to timely submit the basic national fee.

### DISCUSSION

In the submission considered herein, applicants argue that the materials filed on 25 April 2001 should have been treated as a single application. However, based on applicants' submission of materials under two different attorney docket numbers, with separate Fee Transmittal forms and return postcards for each docket number, it is concluded that the USPTO acted properly in treating the 25 April 2001 submission as two separate applications: (1) a national stage filed under 35 U.S.C. 371, which included the petition to revive the application (09/807,444), and (2) a utility application filed under 35 U.S.C. 111(a) (09/807,443).

Based on the treatment of the original submission as two separate applications, the 24 July 2001 decision dismissing the petition to revive under 37 CFR 1.137(b) was proper. The decision stated that applicants had failed to submit the basic national fee. The renewed petition argues that the 25 April 2001 filing included payment of the required fees, referring to an authorized charge for \$685. This amount, set forth in the A00 Fee Transmittal form, was applied to the present application. However, this payment consists of \$620 as the petition fee and \$65 as the small entity surcharge for filing the declaration after the thirty month deadline; it does not include the required basic national fee. The accompanying "Petition To Refund Excess Fees Paid" refers to an additional payment \$1,248 made on 25 April 2001. However, these fees were listed separately on the X00 Fee Transmittal form and identified thereon as the utility filing fee and extra claims fees for such utility application. The \$1,248 fee payment was therefore allocated to the separate application file created under the X00 docket number, 09/807,443. Accordingly, the \$1,248 fee payment (made under the X00 docket number) does not constitute payment of the basic national fee in the present national stage application file (created under the A00 docket number).

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<sup>1</sup> Also on 21 August 2001, applicants filed, in related application 09/807,443: (1) a "Petition" that was accompanied by a copy of the specification (including claims) and a \$130 fee; (2) a "Petition To Grant Original Filing Date And Refund Of Fees"; and (3) a "Letter To PCT Petitions Attorney Richard M. Ross." On 24 October 2001, applicants filed a "Second Preliminary Amendment" in such application. These materials are treated separately in a decision issued concurrently herewith in application 09/807,443.

Based on the above, the finding in the previous decision that the required basic national fee payment was not included in the original materials filed 25 April 2001 was appropriate.

The renewed petition authorizes a charge to Deposit Account No. 01-2135 for any required fees. Based on this authorization, applicants will be charged the required small entity basic national fee of \$365. Based on this charge, the final requirement for a grantable petition to revive the application under 37 CFR 1.137(b) has now been submitted.

Applicants are reminded that the declaration filed herein executes a different international application (PCT/US99/22909) and therefore is unacceptable under 37 CFR 1.497.

### CONCLUSION

Applicants' Renewed Petition for Revival Under 37 CFR 1.137(b) is **GRANTED**. The request to revive PCT/US99/22904 is granted as to the national stage in the United States of America.

Deposit Account No. 01-2135 will be charged the required small entity basic national fee of \$365.

This application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing, including the mailing of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497.



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